

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-88-E - ORDER NO. 2002-281

APRIL 15, 2002

Application of Duke Energy Corporation for)
authorization under Article 13, Chapter 27 of)
Title 58 of the Code of Laws of South)
Carolina, 1976 to Issue and Sell Securities)
(Long-Term Debt Securities, Guarantees in)
connection with Trust Preferred Securities,)
Common Stock, Stock Purchase Contracts and)
Stock Purchase Units))

ORDER APPROVING APPLICATION 

Duke Energy Corporation (the "Company") filed an application dated March 19, 2002, (the "Application") for authorization to issue and sell a maximum of \$2,000,000,000 aggregate public offering price of the above-captioned securities in the manner described in the Application. Based on the verified Application and the Public Service Commission of South Carolina's (the Commission's) entire files and records in this matter, the Commission now makes the following

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina. It is duly authorized by its Articles of Incorporation to engage in the business of generating, transmitting, distributing and selling electric power and energy. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business in this State, and is conducting and carrying on the businesses above mentioned in each of said States. It is a public utility under the laws of this State and in its operations in this State is

subject to the jurisdiction of this Commission. It is also a public utility under the laws of the State of North Carolina and in its operations in that State is subject to the jurisdiction of the North Carolina Utilities Commission. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. In addition, the Company, through its subsidiaries and affiliates, engages in a broad range of energy-related businesses worldwide.

2. The Company proposes, pursuant to its application in this Docket, to issue and sell from time to time a maximum of \$2,000,000,000 aggregate public offering price of all or any combination of the following (collectively, the “Proposed Securities”):

(i) Long-Term Debt Securities (“Proposed Debt Securities”)

All or a portion of the Proposed Debt Securities may be unsecured debt instruments and any balance may be First and Refunding Mortgage Bonds.

To the extent the Proposed Debt Securities are Senior Notes, they will be created and issued under the Company’s Senior Indenture to JPMorgan Chase Bank (formerly The Chase Manhattan Bank), as Trustee, dated as of September 1, 1998, as heretofore supplemented or as further supplemented by a Supplemental Indenture to be executed in connection with their issuance.

To the extent the Proposed Debt Securities are Subordinated Notes, they will be created and issued under the Company’s Subordinated Indenture to JPMorgan Chase Bank (formerly The Chase Manhattan Bank), as Trustee, dated as of December 1, 1997, as heretofore supplemented or as further supplemented by a Supplemental Indenture to be executed in connection with their issuance.

To the extent the Proposed Debt Securities are the Company's First and Refunding Mortgage Bonds, they will be created and issued under the Mortgage (as defined in the Application), as heretofore supplemented and as to be further supplemented and amended by a Supplemental Indenture to be executed in connection with their issuance. They will be subject to all of the provisions of the Mortgage, as supplemented, and by virtue of said Mortgage will constitute (together with the Company's outstanding First and Refunding Mortgage Bonds) a first lien on substantially all of the Company's fixed property and franchises. When any of the Proposed Debt Securities are issued for refunding or refinancings, the Company proposes to execute the proposed transactions so that, over time, there will be no material effect on the Company's capitalization with respect to the source of funds.

The Proposed Debt Securities may also consist of synthetic remarketable/putable debt securities, an example of which is more specifically described in the Company's Report of Issue and Sale in Docket No. 1999-114-E, dated December 15, 2000. Any remarketing of such securities or resetting of their interest rates prior to the scheduled maturity date will not be deemed to be a re-issuance of such securities by the Company, so as to reduce the amount of securities otherwise permitted to be issued by the Company pursuant to the terms of this order.

(ii) Guarantees in connection with Trust Preferred Securities (the "Trust Preferred Guarantees")

As described in the Company's application in Docket No. 1999-240-E, the Company may issue and sell to any or each of Duke Energy Capital Trust III, IV and V (the "Trusts") its Subordinated Notes, as described in Section 2(i) above. As further described in Docket No. 1999-240-E, the Trusts would sell in connection with such transactions their Preferred Securities, certain obligations with respect to which would be guaranteed by the Company, subject to the

limitations further described in such Docket. The Company will not realize any separate proceeds specifically from the Trust Preferred Guarantees. The amount of the authority granted hereunder will be reduced in connection with the issuance of Trust Preferred Securities only to the extent of the aggregate liquidation preference of the Trust Preferred Securities issued in the transaction.

(iii) Common Stock

All or a portion of the Proposed Securities may be the Company's Common Stock, without par value, consisting of a number of shares whose aggregate public offering price is not more than \$2,000,000,000. As contemplated by the Commission's order in Docket No. 1999-011-E, each share of Common Stock outstanding, including the Common Stock to be issued pursuant to the Commission's order in this docket, includes a Preference Stock Purchase Right under the Company's Rights Agreement.

(iv) Stock Purchase Contracts and Stock Purchase Units

All or a portion of the Proposed Securities may consist of stock purchase contracts representing contracts obligating holders to purchase from the Company, and the Company to sell to the holders, a specified number of shares of Common Stock (or a range of numbers of shares pursuant to a predetermined formula) at a future date or dates. The price per share of Common Stock may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. The authorization granted herein includes authority to issue the Common Stock to which such stock purchase contracts relate.

The stock purchase contracts may be issued separately or as a part of units, often known as stock purchase units, consisting of a stock purchase contract and one of the following types of instruments, securing the holder's obligations to purchase the Common Stock under the stock purchase contracts:

- Senior Notes, Junior Subordinated Notes or other debt securities of the Company or a subsidiary of the Company;
- Debt obligations of third parties, including U.S. Treasury securities; or
- Preferred Securities or trust preferred securities issued by trusts, all of whose common securities are owned by the Company or by subsidiaries of the Company.

The stock purchase contracts may require the Company to make periodic payments to the holders of the stock purchase units or vice versa, and such payments may be unsecured or prefunded on some basis. The stock purchase contracts may require holders to secure their obligations in a specified manner and in certain circumstances the Company may deliver newly issued prepaid stock purchase contracts, often known as prepaid securities, upon release to a holder of any collateral securing such holder's obligations under the original stock purchase contract.

The terms of any stock purchase contracts or stock purchase units and, if applicable, prepaid securities will be contained in the stock purchase contracts, the collateral arrangements and depositary arrangements, if applicable, relating to such stock purchase contracts or stock purchase units and, if applicable, the prepaid securities.

3. The Company intends to sell the Proposed Securities during the effective period of one or more "universal" shelf Registration Statements which the Company has filed or will file with the Securities and Exchange Commission in connection with the registration of such securities. The Company proposes to enter into negotiations with, or request competitive

proposals from, investment bankers or other financial institutions to act as agents, dealers, underwriters, or direct purchasers in connection with either the public or private offering of each issuance of Proposed Securities in accordance with the terms thereof. The Company will determine which sales method and financial institution(s) will provide the most favorable terms to the Company for any issuance and sale of the Proposed Securities.

4. The authority requested herein is in substitution of the remaining authority granted by the Commission in Docket No. 2001-140-E. The Company requests that the remaining \$250 million of authority granted in such docket be terminated, and such remaining amount of securities authorized therein subsumed within the authority granted under this order.

5. The Company will pay no fee for services (other than attorneys, accountants, trustees and fees for similar technical services) in connection with the negotiation or consummation of the issuance and sale of any of the Proposed Securities, nor for services in securing underwriters, agents, dealers or purchasers of such securities (other than fees negotiated with such persons.)

6. The Company currently intends to use approximately \$1 billion in proceeds from the sale of Stock Purchase Units (and corresponding Common Stock to be issued in connection therewith) as described in this Application, to refund short-term indebtedness incurred in connection with payment of the cash portion of the consideration paid to the former Westcoast Energy Inc. shareholders, as further described in Applicant's application in Docket No. 2001-441-E. The Company's acquisition of Westcoast as further described in that docket was consummated on March 14, 2002.

CONCLUSIONS

Upon review and study of the verified Application, its supporting data and other information in the Commission's files, the Commission is of the opinion, and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues and that the issuance and sale of the Proposed Securities, as set forth in the Company's Application, are

- a) For lawful objects within the corporate purposes of the Company;
- b) Compatible with the public interest;
- c) Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and
- d) Reasonably necessary and appropriate for such purposes.

When the net proceeds from the sales of securities herein authorized are applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured securities, such sales will be made from time to time when market conditions will permit the sales on terms which would result in a lower cost of money to the Company. Any premium paid on purchased or redeemed securities shall be reflected in the going-forward cost of the newly issued securities.

If any of the securities are sold through a noncompetitive methodology such as in a private placement or at a negotiated price, the Company will on the day of pricing or the next business day notify the Commission in writing (initially by fax is acceptable) of the terms and basis of the pricing including comparative current market data of other similar financing transactions.

IT IS, THEREFORE, ORDERED that Duke Energy Corporation be, and it is hereby, authorized, empowered, and permitted, upon the terms and conditions set forth in its Application:

1. To issue and sell from time to time a maximum of \$2,000,000,000 aggregate principal amount or public offering price, as the case may be, of the Proposed Securities as described in the Application; and

2. To use the net proceeds of such sales to purchase or redeem higher cost securities, to refund maturing securities, to finance its ongoing construction (including the acquisition of nuclear fuel), and for general corporate purposes, including, in the case of proceeds resulting from the sale of Common Stock, Stock Purchase Contracts and/or Stock Purchase Units only, meeting the funding needs of any of the Company's subsidiaries or affiliates. In each case, such proceeds may be used for the repayment of short-term debt obligations incurred for those purposes.

IT IS FURTHER ORDERED, that:

1. The remaining authority to issue and sell securities granted by the Commission in Docket No. 2001-140-E is hereby terminated.

2. The Company file a written report to the Commission within thirty (30) days after the consummation of the sale by competitive bidding, private placement, negotiation, or whatever method used to sell Proposed Securities as herein approved. The report shall contain as a minimum the following data:

- a. Date of Sale;
- b. Aggregate public offering price of securities sold;
- c. Stated coupon/interest/dividend rate, if applicable;

- d. The offering price to the public/purchaser;
- e. The underwriters' commissions/fees;
- f. The net cost to the Company;
- g. Other direct expenses related to the issuance and sale of the securities;
- h. The specific use(s) of the proceeds;
- i. The Docket Number of the Order authorizing the sale and the remaining balance of securities authorized but unsold, and the amount of savings in interest/dividends to be realized if a redemption/refinancing transaction is being reported; and
- j. A copy of the material agreements executed in final form (as soon as available) in connection with the sale of any of the securities herein authorized.


3. This proceeding be and the same is continued on the docket of the Commission, without delay, for the purpose of receiving the report as hereinabove provided. Further, the Commission's approval in this docket does not restrict the Commission's right to review and, if deemed appropriate, adjust the Company's cost of capital for ratemaking purposes for the effect of these securities. This Order shall not in any way affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications or changes with respect to any provision of this Order in accordance with the law, nor shall this Order dictate the ratemaking treatment of this transaction by the Commission.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

[SEAL]